Re ALSAGOFF TRUSTS

[O. C. J. (Murray-Aynsley C.J.) May 17, 1955]
[Singapore — Originating Summons No. 53 of 1954]

Will and Trusts — Will — Gifts for poor relatives — Gifts to persons reading the Quran in testator's name — Fund for burial of poor strangers and gifts for relief of poverty — Provision of mats and Zamzam water in mosque — Provision of illumination in institution for relief of poverty — Gift to be applied in making yearly sacrifice for testator's soul — Whether valid charitable bequests.

The testator in this case by his will and codicils gave directions for the constitution out of part of his estate and the application of a fund called "the Wakaf Fund". The trustees sought directions as to whether certain gifts to be provided out of this fund were valid charitable bequests.

Held: (1) a gift for poor relatives was valid; (2) a gift to persons reading the Quran in the testator's name was not a charitable trust; (3) a fund for the burial of poor strangers and a fund for the purpose of assisting poor strangers could be regarded as gifts for the relief of poverty and were charitable purposes; (4) the provision of mats and Zamzam water in the Mosque at Mecca was a charitable purpose; (5) the provision of illumination in an institution for the relief of poverty was a charitable purpose; (6) a gift to be applied in making yearly sacrifice for the testator's soul was not a charitable trust.

Cases referred to:—

(1) *In re Wilson* (1913) 1 Ch. 314.
(2) *Gilmour v. Coats* (1949) A.C. 426.
(3) *In re Astor* (1952) Ch. 534.
(4) *Morice v. Bishop of Durham* 9 Ves. 521.
(5) *In re Dean* 41 Ch. D. 552.
(6) *National Anti-Vivisection Society v. Inland Revenue Commissioners* (1948) A.C. 31.
(7) *O'Hanlon v. Logue* (1906) 1 I.R. at p. 276.

ORIGINATING SUMMONS.

The questions in the Originating Summons referred to in the Judgment were as follows:

"2. Whether the gifts of five shares of the income of the Wakaf Fund constituted by the said Will and Codicils to be divided equally among the testator's poor relatives residing in Singapore is a valid bequest and if it is a valid bequest, what persons are eligible as recipients of the said gift.

3. Whether the gift of three shares of the income of the said Wakaf Fund to be divided equally among the testator's poor relatives residing outside the Island of Singapore (not including Hydramout in Arabia) is a valid bequest and, if it is a valid bequest, what persons are eligible as recipients of the said gift.

4. Whether the gift of ten shares of the income of the said Wakaf Fund to be divided equally among the testator's poor relatives residing in Saywoon in Hydramout in Arabia is a valid bequest and, if it is a valid bequest what persons are eligible as recipients of the said gift.

9. Whether the gift of one share of the income of the said Wakaf Fund to such poor persons as shall undertake with the consent and approval of the trustees of the said Will and Codicils to read the Quran at the testator's grave according to Mohammadan custom is a valid bequest.

10. Whether the gift of one share of the income of the said Wakaf Fund to such persons as shall read the Quran in the testator's name at Mecca and Saywoon is a valid bequest.

13. Whether one share of the income of the said Wakaf Fund to be formed into a fund for the purpose of providing for the burial of poor Mohammadan strangers dying at Singapore may be handed over to one or more Imams of mosques in Singapore for application for the purpose for which it is intended.

14. Whether the gift of one share of the income of the said Wakaf Fund for the purpose of assisting poor Mohammadan persons who are strangers to the territory formerly known as the "Straits Settlements" is a valid bequest and if so, whether the trustees may delegate the performance of same.

16. Whether the one share of the income of the said Wakaf Fund directed by the testator to be applied in the maintenance and provision of mats and Zamzam water for the use of persons visiting the mosque at Mecca may be paid by the trustees to a third party for application in accordance with the directions of the testator.

17. Whether the one share of the Income of the said Wakaf Fund directed by the testator to be applied in the maintenance and provision of oil and other means of illumination for the Rubad Sadayat Medina, may be paid by the trustees to a third party for application in accordance with the wishes of the testator.

18. Whether the gift of three shares of the income of the said Wakaf Fund to be applied in making once a year a sacrifice for the testator's soul is a valid gift."

K. E. W. Hatchard for the trustees (applicant)

T. H. A. Potts for the third trustees.

R. H. Green for persons interested.

A. V. Winslow (Crown Counsel) for the Attorney-General.

Murray-Aynsley C.J. : — This judgment deals with the following question in the Originating Summons, viz. 2, 3, 4, 9, 10, 13, 14, 16, 17 and 18

These all arise out of Clause 14 of the will which is as follows:—

"14. My Trustees shall stand possessed of the 66 shares comprised in the first division of the Wakaf Fund upon trust to apply the same as follows:—

Three of such shares to the mosque of my grandmother Hadjee Fatimah at Kampong Glam for the upkeep of the said mosque, the maintenance of the usual ceremonies therein and other expenses connected with the mosque.

Four of such shares in the distribution at the family house of food and other articles to the poor weekly on the night of Jumahat. Five of such shares to be divided equally among my poor relatives residing in the Island of Singapore. Three of such shares to be divided equally among my poor relatives residing outside of the Island of Singapore not including Hydramout in Arabia. Ten of such shares to be divided equally among my poor relatives residing in Saywoon in Hydramout in Arabia. Five of such shares to be divided among the poor persons of Saywoon in Arabia aforesaid. Three of such shares to be divided among the poor persons of Hydramout outside Saywoon in Arabia aforesaid. Two of such shares to be applied for the maintenance and support of poor

students for the Mohamedan Priesthood at Saywoon in Arabia aforesaid in such proportions as my trustees think fit. Three of such shares to be distributed among the poor persons in Mecca. Three of such shares to be distributed among the poor persons in Medina. Eight of such shares I bequeath to the Arab School beforementioned to be applicable for the general purposes of such School and I declare that the receipt of the Treasurer or other proper officer for the time being of such School shall be sufficient discharge for the same. One of such shares to be paid to such poor persons as shall undertake with the consent and approval of my Trustees to read the Quran at my grave according to the Mohamedan Custom. One of such shares to be paid to such persons as shall read the Quran in my name at Mecca and Saywoon. One of such shares to be applied in providing food for poor persons in Singapore during the fasting month. Two of such shares to be applied for sadikah to be given to poor persons on the 27th day of the month of Ramadhan in every year at the mosque of the said Hadjee Fatimah. One of such shares to be formed into a fund for the purpose of providing of the burial of poor Mohamedan Strangers dying in Singapore. One of such shares to be provided for assisting poor Mohamedan persons strangers to the Straits Settlements going to their places of residence who may not have the money for the same or otherwise be in difficulties. Five of such shares to be applied in renting houses in Mecca for the occupation of the poor.

One of such shares to be applied in the maintenance and provision of mats and Zamzam water for the use of persons visiting the Mosque at Mecca. One of such shares to be applied in the maintenance and provision of oil and other means of illumination for the Rubad Sadayat Medina. Three of such shares to be applied in making once a year the sacrifice for my soul."

Questions (2), (3) and (4). These questions arise out of the words :—

"Five of such shares to be divided equally among my poor relatives residing in the Island of Singapore. Three of such shares to be divided equally among my poor relatives residing outside of the Island of Singapore not including Hydramout in Arabia. Ten of such shares to be divided equally among my poor relatives residing in Saywoon in Hydramout in Arabia."

Gifts for poor relatives may be charitable. I think that here there was a charitable intention. The difficulty arises from the fact that it does not appear that the trust can be carried out in accordance with the terms of the will. I do not think that this is a case in which the charitable intention is subordinate to the method by which it is to be effected, as in *In re Wilson*[1]. I consider that these are valid charitable trusts.

Questions (9) and (10). Here the relevant words are :—

"One of such shares to be paid to such poor persons as shall undertake with the consent and approval of my Trustees to read the Quran at my grave according to the Mohamedan Custom. One of such shares to be paid to such persons as shall read the Quran in my name at Mecca and Saywoon."

I think that these are not charitable trusts, having regard to *Gilmour v. Coats*[2]. The first cannot, I think, be treated as the relief of poverty. The question remains, apart from the question of perpetuity, whether they can take effect as "purpose trusts". I do not think that *In re Astor's Settlement Trusts*[3], decided anything new. It merely repeats what was decided in *Morice v. Bishop of Durham*[4]. The supposed exceptions to the rule, e.g. *In re Dean*[5], can only be justified as gifts to so called trusrees. We can merely say that in these excepted cases the property is not undisposed of. In that particular case I think that the explanation given by North J. is incorrect. There cannot be a trust in favour of particular animals unless animals can be the subject of rights which of course they cannot. Natural obligations are of considerable importance in law. The law does not constrain people to pay gambling debts but if they do they cannot recover it.

I think as a matter of construction that these gifts fall within the exception and these are gifts to the trustees. Clause 15 of the will applies.

The same answer may be given to *Question 18.*

Questions (13) and (14). I think that these can properly be regarded as gifts for the relief of poverty. Burial is not in the preamble to the statute. However, cemeteries may be charitable and by analogy I think burial may be a charitable purpose.

Question (16). The words in question are :—

"One of such shares to be applied in the maintenance and provision of mats and Zamzam water for the use of persons visiting the Mosque at Mecca."

I think the intention here is the advancement of religion. In view of *Gilmour v. Codes*[2] and *National Anti-Vivisection Society, v. Inland Revenue Commissioners*[6], it is difficult to see how, logically, any religious purpose can have the necessary element of public utility to make it charitable. I do not think that there is logically any escape from the dilemma posed by Palles, C.B. in *O'Hanlon v. Logue*[7] :—

"The law must cease to admit that any divine worship can have spiritual efficacy to produce a public benefit or it must admit the sufficiency of spiritual efficacy, but ascertain it according to the doctrines of the religion whose act of worship it is".

However, the Courts have not been logical in the past and I do not suppose that they will be so in the future. Such benefit to the public who attend churches as is provided by hassocks to kneel upon will no doubt continue to be regarded as charitable while the performance of the rites at which they have come to assist will not.

In this plane I think these are good charitable gifts.

Question (17). Here the words are :—

"One of such shares to be applied in the maintenance and provision of oil and other means of illumination for the Rubad Sadayat Medina".

After some discussion it was agreed that this is an institution for the relief of poverty. The provision of illumination seems to be, therefore, a charitable purpose.

Costs of all parties, solicitor and client, out of Estate.

Order accordingly.

Solicitors : *Donaldson & Burkinshaw; Sisson & Delay; Braddell Bros.*